

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">vs.</div> DEMETRIUS JOHNSON, <div style="text-align: center;">Defendant.</div>))))))))))	CASE NO. 8:08CR136 TENTATIVE FINDINGS
--	--	--

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 30). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant did not file informal objections as required by the Order on Sentencing Schedule. (Filing No. 27, ¶ 4.) In the formal objections, the Defendant objects to ¶¶ 14, 15, 16, 17, 18, 27, 42-44 and 46-49, 53 and 61 of the PSR.¹ The objections are briefly discussed below.

¶ 14 - *Where a Gun Was Found*

The objection is denied, as it does not affect the guideline calculation.

¹The paragraph numbers used by defense counsel in the objections do not correspond to the paragraph numbers in the Revised PSR apparently because counsel refers to the initial draft of the PSR sent only to counsel. Where the correct numbers are easily determined, the Court has added them.

¶¶ 15, 16, 17, 18 - Individuals and Sales of Crack Cocaine to Them

The objections are denied, as they do not affect the guideline calculation. The base offense level was assigned as contemplated in the plea agreement.

¶ 27, now 32 - Gun Enhancement

The plea agreement states that the parties agreed that the Defendant possessed a gun in connection with the offense, and therefore a 2-level upward adjustment under U.S.S.G. § 2D1.1(b)(1) applies. (Filing No. 29, ¶ 8(e).) The Defendant now argues that he did not possess a gun and the enhancement should not apply. The objection is denied.

¶¶ 42-44, 46-49, now 6-48 and 50-53 - Prior Convictions

The Defendant argues that 4 criminal history points is an overstatement of criminal history for these offenses as they are all infractions or traffic misdemeanors. The points are assigned according to the guidelines, and the objection is denied.

¶¶ 53 and 61

The issues objected to do not affect the guideline calculation. The objections are denied.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 30) are denied;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of August, 2008.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge